

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1331 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL RAZAK ADALBHAI VOHRA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

MR KG SHETH, Learned AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

C.A.V. JUDGEMENT

1. The petitioners abovenamed have preferred this
petition under Articles 226 and 227 of the Constitution
of India for appropriate writ, order or direction for

setting aside the order dated 20.4.1991 and to maintain the order of Collector dated 29.5.1987.

2. The facts of the case may briefly be stated as under :

That the Collector, Sabarkantha District at Himmatnagar passed an order on 29.8.1987 granting certain land to the petitioners as described in the said order which is placed at Annexure-A at page-17. The said lands were granted to the petitioners by way of lease. The terms and conditions of the grant of lease have been enumerated at page-18 in the said order. Accordingly, it can be gathered that the lease was for a period of 15 years from the year 1987-1988. It is also shown that the petitioners were not required to pay rent for a period of first 8 years. Thereafter, they were required to pay the rent prevailing for the said land for the remaining 7 years. It further shows that on completion of such period of lease of 15 years, the petitioners were required to submit an application for renewal. There are conditions for plantation of trees and these conditions have also attached to the said grant. Thereafter, on 29.9.1990, the Additional Chief Secretary (Appeals) Revenue Department, Government of Gujarat issued notices to the petitioners stating that the said order of the Collector was illegal on the ground mentioned in the said notices. The said authority therefore required the petitioners to show cause as to why the said lease be not cancelled. The petitioners appeared before the authority and submitted their case. Thereafter, the said authority passed an order on 23.4.1991 which is placed at page-24 to the petition. By the said order, the said authority, has cancelled the order of Collector dated 29.8.1987. Feeling aggrieved by the said order of the said authority, the petitioners have preferred this petition before this Court.

3. It has been mainly contended here that the petitioners had applied for the allotment of land long back and after due consideration, the land was allotted to the petitioners in the year 1987 by the order of the Collector referred to hereinabove. It is contended that the said authority of the Government of Gujarat has taken action after long lapse of delay of three years and in the meantime, the petitioners have developed the land and planted trees. That the petitioners have not committed violation of terms and conditions of the order of allotment. That therefore the order of said authority taking the matter in revision suo-motu and cancelling the order of the Collector is illegal, the petitioners have

therefore prayed for quashing and setting aside the order of the said authority of the Government of Gujarat dated 23.4.1991.

4. On receiving the petition, rule was issued and ad-interim relief was granted in terms of para 10(E). Mr. K.G.Sheth, learned AGP appears for State in response to the service of rule. It appears that no affidavit has been filed by the respondents. I have heard learned advocates for the parties and have perused the papers.

5. Mr. P.V.Hathi, learned advocate for the petitioner has argued at length that though the land was granted in 1987, the State Government initiated proceedings in 1990. That there was passage of three years and the said period has not been explained. It is further contended that the lease was granted for a period of fifteen years and out of the said period of fifteen years, there is a passage of twelve years and only three years have now remained. It is further contended that the delay has not been explained and the State Government or Additional Chief Secretary could not entertain suo-motu revision application after lapse of three years. That therefore the order of the said authority is illegal inasmuch as delay has not been explained by the said authority.

6. In support of the said contention, the learned advocate for the petitioner has relied upon a decision in the case of Mohmad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, reported in (1997) 6 SCC 71. There, the Hon'ble Supreme Court has considered the previous decision of the Hon'ble Supreme Court reported in (1969) 2 SCC 187 in the case of State of Gujarat Vs. Patel Raghav Natha in order to find that the delay taking suo-motu action by the higher authority is fatal. That matter arose from Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976. The Hon'ble Supreme Court found that suo-motu inquiry by the Mamlatdar under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 should have been initiated within a reasonable time. The sale of land had taken place in December, 1972 and suo-motu inquiry started in September, 1973. That when there is no time limit prescribed for exercise of powers in statute, it should be exercised within the reasonable time. Relying upon the previous decision in the case of State of Gujarat Vs. Patel Raghav Natha (supra), the Hon'ble Supreme Court found that the powers were not exercised within the reasonable time. In the present case, the powers are have been exercised after long lapse of delay of three years. The said delay has not been explained. Moreover,

the petitioners have developed the land and have planted trees in accordance with the terms and conditions of the lease granted to the petitioners. Therefore, when expenditure has been undergone, labour has also been put in by the petitioners for the development of land for a period of three years, then in that event, the order passed after long lapse of three years cannot be upheld. It is more so when that the respondents have not explained the delay. Even no affidavit has been filed by the respondents and there is nothing on record to show that as to why the Additional Chief Secretary entertained the matter after long delay of three years.

7. It may be considered here that at initial stage an attempt was made to show that the order passed in favour of the petitioners by showing favouritism to the petitioners. It was shown that one of the petitioner Mr. Abdulraak Adalbhai Vora was the brother of the Mamlatdar. It has also been shown that Ms. Subhadraaben Arunbhai Desai was the wife of the Mamlatdar. That therefore it was believed that the instructions have been bypassed for the grant of the land in favour of the petitioners. When the final order was passed, same has not been based on the above issue of favouritism. Therefore, issue of favouritism has been let gone by and the said issue is not the ground or basis for exercising suo-motu powers by the Additional Chief Secretary. The Additional Chief Secretary has mainly relied upon the ground that proper procedure was not followed and advertisement was not issued. Since this was not done this is a matter of procedural error on the part of the State Officers. The petitioners have not taken undue advantage of their position. It has been submitted that their application was filed long back and after careful consideration to the said application, lease has been granted after nearly 7 to 8 years and in the meantime, none had applied for the grant of the said land. In the peculiar facts and circumstances of the case and considering the fact that the issue of favouritism did not weigh with the Additional Chief Secretary for cancelling the lease in favour of the petitioners and considering the fact that the petitioners have been in possession of the land in question for nearly 12 years and considering the fact that the suo-motu powers have been exercised after long lapse of three years, I am of the view that this is a fit case wherein this Court should exercise extra ordinary jurisdiction and powers under Articles 226 and 227 of the Constitution of India in order to quash and set aside the order of the Additional Chief Secretary. At the same time, it has to be made clear that on expiry of period of lease of 15 years, the petitioners would naturally be at

liberty to submit their applications for renewal of the lease and at that time, the respondents would also be at liberty to consider and dispose of the said applications, if any, on merits.

8. In that view of the matter, there is no alternative but to quash and set aside the aforesaid order of the Additional Chief Secretary. Therefore, the present petition is allowed and the order of the Additional Chief Secretary (Appeals) Government of Gujarat, Revenue Department dated 23.4.1991 placed at Annexure-C at page-24 to the petition is ordered to be quashed and set aside and the respondents are prevented from implementing the said order dated 23.4.1991. It is also made clear that on or before expiry of period of lease, the petitioners will be at liberty to submit their applications for renewal of lease and at the same time, the respondents shall be at liberty to consider and dispose of the said applications on merits. Rule is made absolute accordingly. No order as to costs.

(D.P.Buch,J)

(vipul)